

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LION RAISINS, INC.,	)	1:08-cv-0358 OWW SMS
)	
Plaintiff,	)	SCHEDULING CONFERENCE ORDER
)	
v.	)	Motion for Right to Conduct
	)	Discovery Filing Deadline:
UNITED STATES DEPARTMENT OF	)	9/29/08
AGRICULTURE,)	
	)	Hearing Date: 11/3/08 10:00
Defendant.	)	Ctrm. 3
)	
	)	Cross-Motions For Summary
	)	Judgment Filing Deadline:
	)	5/18/09
)	
	)	Oppositions Filing
	)	Deadline: 6/2/09
)	
	)	Replies Filing Deadline:
	)	6/9/09
)	
	)	Hearing Date: 6/6/09 10:00
	)	Ctrm. 3 (Time Reserved for
	)	Extended Oral Argument)

I. Date of Scheduling Conference.
August 14, 2008.

II. Appearances Of Counsel.

Wesley T. Green, Esq., appeared on behalf of Plaintiff.
Benjamin E. Hall, Esq., Assistant United States Attorney,
appeared on behalf of Defendant.

1 III. Summary of Pleadings.

2 1. Complaint: This is an action under the Freedom of
3 Information Act ("FOIA"), 5 U.S.C. § 552. Plaintiff, a raisin
4 handler, alleges in its Complaint for Declaratory and Injunctive
5 Relief; Stay of Administrative Proceedings; Temporary Restraining
6 Order; and Attorneys' Fees ("Complaint") that USDA has improperly
7 withheld information relating to USDA inspection and grading of
8 Plaintiff's raisins. The Complaint contains nine counts, as
9 follows:

10 2. Count One: Refusal to Produce Disposition Plans for
11 "FR" and "RAC" Forms (FOIA No. 97-07). Plaintiff alleges that
12 USDA failed to perform an adequate search for requested records
13 and withheld disposition plans for "FR" and "RAC" forms in bad
14 faith and for the purpose of delay.

15 3. Count Two: Refusal to Produce Transfer and Destruction
16 Records (FOIA No. 96-07). Plaintiff alleges that USDA failed to
17 perform an adequate search for records and falsely claimed that
18 requested records had been destroyed. Plaintiff further alleges
19 that the USDA Administrator improperly and in bad faith upheld
20 the agency's determination after Plaintiff filed an
21 administrative appeal.

22 4. Count Three: Refusal to Produce Line Check Sheets and
23 Memorandum Reports of Inspection (FOIA No. 184-001). Plaintiff
24 alleges that USDA failed to perform an adequate search for
25 requested records and improperly withheld documents including
26 Line Check Sheets for recondition, Afghan and Chilean raisins.
27 Plaintiff further alleges that the USDA Administrator improperly
28 and in bad faith upheld the agency's determination after

1 Plaintiff filed an administrative appeal.

2 5. Count Four: Failure to Respond to Appeal Re: Renewed
3 Request for Worksheets (FOIA No. 85-04). Plaintiff alleges that
4 USDA improperly withheld Certificate Worksheets based upon an
5 ongoing administrative investigation under Exemption 7(A).
6 Plaintiff further alleges that Worksheets were illegally
7 transferred from the Fresno Field Office to Washington, D.C.

8 6. Count Five: Failure to Respond to Request for
9 Disposition Records for Worksheets. Plaintiff alleges that USDA
10 failed to timely answer a request for the disposition schedule
11 and all records relating to the destruction and/or transfer of
12 Worksheets.

13 7. Count Six: Failure to Respond to Appeal Re: Warning
14 Letters and Compliance Cases (FOIA No. 61-01). Plaintiff alleges
15 that in response to an FOIA request, USDA released six batches of
16 records from which certain information was redacted to protect
17 trade and financial secrets, privacy, and for law enforcement
18 purposes. Plaintiff alleges that USDA failed to properly
19 identify the redactions.

20 8. Count Seven: Refusal to Provide Access to Original
21 Records (FOIA Nos. 22-06, 23-06, 25-06 and 27-06). Plaintiff
22 alleges that in response to Plaintiff's request for physical
23 access to original Line Check Sheets, Worksheets, Voided
24 Certificates, Letters and/or Memorandum Reports of Investigation,
25 USDA requested unreasonable fees for search and review, which
26 fees were tantamount to an outright denial. Plaintiff further
27 alleges that the USDA Administrator improperly upheld the
28 decision.

1 9. Count Eight: Violation of Administrative Procedure
2 Act. Plaintiff contends that USDA's actions were arbitrary and
3 capricious under the Administrative Procedure Act.

4 10. Count Nine: Bad Faith by the USDA. Plaintiff contends
5 that USDA's refusal to produce documents was arbitrary,
6 capricious and a bad faith attempt to delay processing of the
7 requests and to conceal exculpatory evidence.

8 11. Plaintiff requests declaratory and injunctive relief,
9 including an injunction requiring USDA to produce the requested
10 documents. Plaintiff further requests issuance of a stay of
11 administrative debarment proceedings against Plaintiff; a
12 temporary and permanent injunction against destruction of
13 inspection and grading records; and other relief including a fee
14 waiver, sanctions and attorney's fees.

15 12. Answer: USDA admits that Plaintiff submitted certain
16 FOIA requests and that USDA released thousands of pages of
17 records in full or in part in response to Plaintiff's FOIA
18 requests. USDA further admits that portions of the requested
19 records were properly withheld pursuant to statutory exemptions
20 under FOIA. USDA further admits that its responses to
21 Plaintiff's requests have been upheld upon administrative appeal
22 by Plaintiff. USDA denies that it has improperly withheld any
23 records or portions of records. USDA denies each and every
24 allegation of improper conduct and bad faith. USDA also asserts
25 various affirmative defenses including that Plaintiff failed to
26 follow required administrative procedures, made improper FOIA
27 requests, and seeks remedies that are not available under FOIA.
28 USDA denies that Plaintiff is entitled to any relief whatsoever,

1 and USDA requests that the Complaint be dismissed with prejudice.

2 IV. Orders Re Amendments To Pleadings.

3 1. Plaintiff contemplates amending the pleadings and shall
4 have through and including August 25, 2008, to file an amended
5 complaint. The government shall have fifteen (15) days to
6 respond to the amended complaint.

7 V. Factual Summary.

8 A. Admitted Facts Which Are Deemed Proven Without Further
9 Proceedings.

10 1. Plaintiff is a raisin handler and is regulated by
11 a federal marketing order.

12 2. USDA's Agricultural Marketing Service commenced an
13 investigation of Plaintiff, and a search warrant was served upon
14 Plaintiff in October 2000.

15 3. Debarment proceedings were commenced against
16 Plaintiff.

17 4. Plaintiff has submitted numerous FOIA requests,
18 including FOIA Nos. 97-07, 96-07, 184-001, 85-04, 61-02, 22-06,
19 23-06, 25-06 and 26-06.

20 5. In response to Plaintiff's FOIA requests, USDA
21 released various records and withheld other records.

22 6. Plaintiff has filed appeals from USDA's responses
23 to various FOIA requests.

24 B. Contested Facts.

25 1. All other factual matters are contested.

26 VI. Legal Issues.

27 A. Uncontested.

28 1. Jurisdiction exists under 28 U.S.C. § 1331 and 5

1 U.S.C. §§ 702 et seq.

2 2. Venue is proper under 28 U.S.C. § 1391.

3 3. The parties agree that Federal law governs all
4 issues in the case.

5 B. Contested.

6 1. All remaining legal issues are contested.

7 VII. Consent to Magistrate Judge Jurisdiction.

8 1. The parties have not consented to transfer the
9 case to the Magistrate Judge for all purposes, including trial.

10 VIII. Corporate Identification Statement.

11 1. Any nongovernmental corporate party to any action in
12 this court shall file a statement identifying all its parent
13 corporations and listing any entity that owns 10% or more of the
14 party's equity securities. A party shall file the statement with
15 its initial pleading filed in this court and shall supplement the
16 statement within a reasonable time of any change in the
17 information.

18 IX. Discovery Plan and Cut-Off Date.

19 1. The parties do not agree as to whether discovery should
20 be allowed in this case.

21 2. USDA contends that because this is an FOIA case,
22 ordinary discovery is inappropriate. *See, e.g., Lane v. KOI*, 523
23 F.3d 1128, 1134-1135 (9th Cir. 2008) ("in FOIA and Privacy Act
24 cases, discovery is limited . . . [c]ourts routinely delay
25 discovery until after summary judgment"); *Judicial Watch, Inc. v.*
26 *Exp.-Imp. Bank*, 108 F.Supp.2d 19, 25 (D.D.C. 2000) ("discovery in
27 an FOIA action is generally inappropriate"); *Katzman v. Freeh*,
28 926 F.Supp. 316, 319 (E.D.N.Y. 1996) ("discovery in a FOIA action

1 is extremely limited"); *Wheeler v. CIA*, 271 F.Supp.2d 132, 139
2 (D.D.C. 2003) ("discovery is generally unavailable in FOIA
3 actions").

4 3. Plaintiff contends that this case cannot be decided on
5 the administrative record alone. Plaintiff alleges governmental
6 misconduct, including retaliation, perjury, unlawful search and
7 seizure, gross negligence, illegal punishment, defamation,
8 misrepresentation, obstruction of justice, bad faith, abuse of
9 discretion, contempt and the illegal destruction and/or
10 alienation of public records which carries potential criminal
11 charges. As such, Plaintiff requests discovery. *American Civil*
12 *Liberties Union v. Department of Defense*, 389 F.Supp.2d 547, 553
13 (S.D.N.Y. 2005) (in order to justify discovery once the agency
14 has satisfied its burden, the plaintiff must make a showing of
15 bad faith on the part of the agency sufficient to impugn the
16 agency's affidavits or declarations, or provide some tangible
17 evidence that an exemption claimed by the agency should not apply
18 or summary judgment is otherwise inappropriate).

19 4. The Plaintiff will file a motion concerning the right
20 to conduct discovery on or before September 29, 2008. That
21 motion shall be heard November 3, 2008, at 10:00 a.m. in
22 Courtroom 3.

23 5. The parties' cross-motions for summary judgment shall
24 be filed on or before May 18, 2009. Oppositions to such motions
25 shall be filed June 2, 2009. Replies shall be filed by June 9,
26 2009. The motion will be heard July 6, 2009, at 10:00 a.m., and
27 the Court will reserve extended time for oral argument.

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XII. Motions - Hard Copy.

1. The parties shall submit one (1) courtesy paper copy to the Court of any motions filed that exceed ten pages and any motions that have exhibits attached. Exhibits shall be marked with protruding numbered or lettered tabs so that the Court can easily identify such exhibits.

XIII. Settlement Conference.

1. The parties do not believe that a Settlement Conference would be productive at this time. The parties shall notify the Court if a settlement conference would be helpful and one would be scheduled.

2. Unless otherwise permitted in advance by the Court, the attorneys who will try the case shall appear at the Settlement Conference with the parties and the person or persons having full authority to negotiate and settle the case on any terms at the conference.

3. Permission for a party [not attorney] to attend by telephone may be granted upon request, by letter, with a copy to the other parties, if the party [not attorney] lives and works outside the Eastern District of California, and attendance in person would constitute a hardship. If telephone attendance is allowed, the party must be immediately available throughout the conference until excused regardless of time zone differences. Any other special arrangements desired in cases where settlement authority rests with a governing body, shall also be proposed in advance by letter copied to all other parties.

4. Confidential Settlement Conference Statement.
At least five (5) days prior to the Settlement Conference the

1 parties shall submit, directly to the Magistrate Judge's
2 chambers, a confidential settlement conference statement. The
3 statement should not be filed with the Clerk of the Court nor
4 served on any other party. Each statement shall be clearly
5 marked "confidential" with the date and time of the Settlement
6 Conference indicated prominently thereon. Counsel are urged to
7 request the return of their statements if settlement is not
8 achieved and if such a request is not made the Court will dispose
9 of the statement.

10 5. The Confidential Settlement Conference
11 Statement shall include the following:

12 a. A brief statement of the facts of the
13 case.

14 b. A brief statement of the claims and
15 defenses, i.e., statutory or other grounds upon which the claims
16 are founded; a forthright evaluation of the parties' likelihood
17 of prevailing on the claims and defenses; and a description of
18 the major issues in dispute.

19 c. A summary of the proceedings to date.

20 d. An estimate of the cost and time to be
21 expended for further discovery, pre-trial and trial.

22 e. The relief sought.

23 f. The parties' position on settlement,
24 including present demands and offers and a history of past
25 settlement discussions, offers and demands.

26 XIV. Request For Bifurcation, Appointment Of Special Master,
27 Or Other Techniques To Shorten Trial.

28 1. None.

1 XV. Related Matters Pending.

2 1. As noted, *Lion Raisins, Inc. v. United States*
3 *Department of Agriculture*, Case No. 1:05-cv-0062 OWW SMS, is a
4 related matter. In that case, Plaintiff's Motion for Relief from
5 Judgment remains pending.

6 XVI. Compliance With Federal Procedure.

7 1. The Court requires compliance with the Federal
8 Rules of Civil Procedure and the Local Rules of Practice for the
9 Eastern District of California. To aid the court in the
10 efficient administration of this case, all counsel are directed
11 to familiarize themselves with the Federal Rules of Civil
12 Procedure and the Local Rules of Practice of the Eastern District
13 of California, and keep abreast of any amendments thereto.

14 XVII. Effect Of This Order.

15 1. The foregoing order represents the best
16 estimate of the court and counsel as to the agenda most suitable
17 to bring this case to resolution. The trial date reserved is
18 specifically reserved for this case. If the parties determine at
19 any time that the schedule outlined in this order cannot be met,
20 counsel are ordered to notify the court immediately of that fact
21 so that adjustments may be made, either by stipulation or by
22 subsequent scheduling conference.

23 2. Stipulations extending the deadlines contained
24 herein will not be considered unless they are accompanied by
25 affidavits or declarations, and where appropriate attached
26 exhibits, which establish good cause for granting the relief
27 requested.

28 3. Failure to comply with this order may result in

1 the imposition of sanctions.

2
3 IT IS SO ORDERED.

4 Dated: August 15, 2008

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE